

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

## OAKLAND DIVISION

## SAN FRANCISCO TECHNOLOGY, INC.,

Case No: C 10-5597 SBA

Plaintiff,

# ORDER GRANTING DEFENDANT'S MOTION TO TRANSFER

VS.

PFIZER INC.,

## Docket 16

Defendant.

Defendant.

Plaintiff San Francisco Technology, Inc., (“Plaintiff”) brings the instant action as a qui tam relator against Defendant Pfizer Inc. (“Defendant”) for false marking under the Patent Act, 35 U.S.C. § 292(a). In particular, Plaintiff claims that, in violation of section 292(a), Defendant falsely marked certain Advil Ibuprofen Caplets (“Advil Products”) with an expired patent number with the intent to deceive the public. Defendant’s wholly-owned subsidiary Wyeth LLC (“Wyeth”) is responsible for marking the Advil Products.

The parties are presently before the Court on Defendant's Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6), or, Alternatively, to Transfer Pursuant to 28 U.S.C. § 1404(a). The gravamen of Defendant's motion to dismiss is that Plaintiff has failed to allege sufficient facts under Federal Rule of Civil Procedure 8(a) and failed to plead fraud with particularity under Rule 9(b). As an alternative motion, Defendant requests that the Court transfer the action under 28 U.S.C. § 1404(a) to the District of New Jersey, where Wyeth is headquartered and the relevant witnesses and

1 documents are located. Plaintiff counters that its Complaint is sufficiently pled, but in any  
2 event, it should be allowed leave to amend to cure any deficiencies found by the Court.  
3 However, Plaintiff responds that it “does not oppose Pfizer’s request to transfer the case to  
4 the District of New Jersey.” Pl.’s Opp’n at 2. In consideration of Plaintiff’s non-opposition  
5 to Defendant’s motion to transfer this action under 28 U.S.C. § 1404(a), and finding good  
6 cause to grant Defendant’s alternative motion to transfer venue,

7 IT IS HEREBY ORDERED THAT Defendant’s alternative motion to transfer venue  
8 to the District of New Jersey is GRANTED. The Court declines to reach Defendant’s  
9 motion to dismiss, which is denied without prejudice to renewal in the transferee court.

10 IT IS SO ORDERED.

11 Dated: June 20, 2011

  
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SAUNDRA BROWN ARMSTRONG  
United States District Judge

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